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2014
Benefits
@
Work
Conference

Affordable Care Act

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Dayle DeLong

2014 Benefits at Work Conference

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Today we will cover:

- Employer Mandates
- Who is the “Employer”?
- Penalties for failing to comply
- Reporting requirements
- October enrollment process
- Enrollment after October
- FAQs

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Employer Mandate

- Applicable large employers (ALE)s are required to offer health insurance that is affordable and provides minimum value to substantially all full-time employees and their dependent children younger than 26 or pay a penalty to the IRS

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Transition Relief

Employer Categories

- **Small employer**
 - Fewer than 50 full-time equivalent employees
 - Not subject to “play or pay” requirements
 - No reporting in 2015 or in any other year
- **Medium-sized employer**
 - 50 to 99 full-time equivalent employees
 - Not subject to “play or pay” penalties until 2016
 - Still required to report on workers and coverage in 2015

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Transition Relief



- **Applicable Large Employer (ALE)**
 - 100 or more full-time equivalent employees
 - Must offer coverage to 70% of eligible employees in 2015
 - Must offer coverage to 95% of eligible employees in 2016

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Is my employer an Applicable Large Employer?

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Who is the Employer?

Three Categories of Employers

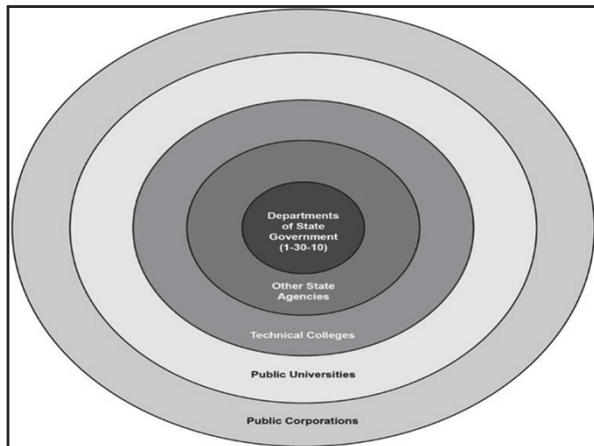
- Pursuant to S.C. Code Ann. Sections 1-11-710 and 1-11-720, there are three categories of employers eligible to participate in the State Health Plan
 - The State
 - Public School Districts
 - Local Subdivisions
- Each public school district and local subdivision will be considered their own employer for the purposes of determine ALE status

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Who is the Employer?

What about “The State”?

- There are five categories of employers who participate in the State Health Plan as “The State”
- The IRS has provided guidance for private sector companies with multiple subsidiaries but has provided limited guidance for governmental employers
- PEBA’s legal counsel has been charged with making a reasonable determination of who will be considered the employer for “The State”



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Who is the Employer?

Our Thoughts

- Each local subdivision will be considered an ALE
- Each school district will be considered an ALE
- Departments of state government and other state agencies
 - If payroll is processed by the Comptroller General's (CG) office, these agencies will be considered one ALE group – this ALE will be referred to as the "state" ALE
 - If payroll is not processed by the Comptroller General's (CG) office, the agency will be its own ALE

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Who is the Employer?

Our Thoughts

- Each technical college will be considered an ALE
- Each public university will be considered an ALE
- Each public corporation insured by PEBA Insurance Benefits will be considered its own ALE

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Do We Have to Offer Coverage to These Newly Eligible Individuals?

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Do We Have to Offer Coverage?

Eligible Employees

- PEBA amended the Plan of Benefit document to allow coverage for variable-hour and full-time non-permanent employees
- If an employee is eligible for benefits, he should be offered coverage
- If an employer fails to offer coverage, he may be subject to penalties from the IRS

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Penalties



Two Types of Employer Penalties

- “A” Penalty – Failing to Offer Coverage
- “B” Penalty – Offering coverage that is not affordable or does not provide minimum value

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Clarification

Full-time Employee

- In the IRS regulations, the term “full-time employee” refers to:
 - Full-time permanent employees
 - Full-time non-permanent employees
 - Variable-hour employees

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The “A” Penalty §4980H(a)

Failing to Offer Coverage

- If the employer fails to offer minimum essential coverage to 70% of its full-time employees and at least one full-time employee obtains subsidized coverage through the exchange, penalty is \$2,000 per year for each of the employer’s full-time employees (after the first 80)

* In 2016, employers must offer coverage to 95% of its full-time employees, and the penalty can only be reduced by the first 30 employees

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The “A” Penalty §4980H(a)


Penalty

- Will be assessed to the employer that fails to offer coverage to 70% of its employees
- “State Entities” – Each agency’s EIN will be reported to the IRS on Form 1095-C and penalties will be applied to the specific agency that fails to comply

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The “B” Penalty

§4980H(b)



Coverage is Not Affordable

- If the employer offers coverage to at least 70% of its full-time employees, but coverage is not affordable (or does not provide minimum value) and a full-time employee obtains subsidized coverage through the exchange, the penalty is \$3,000 per year for each employee who obtains subsidized coverage

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Definitions

Minimum Value

- Requires that plan bear at least 60% of health plan's total costs, other than premiums
- PEBA's actuaries have determined SHP Savings Plan and SHP Standard Plan meet minimum value test

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Definitions

Affordable Coverage

- Coverage is not affordable if employee's share of premium exceeds 9.5% of employee's household income
- Coverage offered by PEBA is affordable
 - Based on SHP Savings Plan – Subscriber only coverage at \$9.70 per month
 - \$9.70 per month X 12 months = \$116.40 per year
 - \$116.40 divided by .095 = \$1,225.26 per year


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How Will the IRS Know?

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Employer Reporting



Reporting Requirements for ALE

- Section 6056 of the Internal Revenue Code requires an ALE to
 - Report information about the health coverage, if any, it offered to full-time employees
 - Provide a statement to employees about the coverage available during the calendar year

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Employer Reporting

Employer Reporting (§6056)

- An ALE must submit a 6056 return (Form 1095-C and Form 1094-C) to the IRS by February 28 (March 31 if filed electronically)
- Information required on the return includes general information about the employer as well as employee-specific information

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Employer Reporting

Employer Reporting (\$6056)

- **General Information**
 - Name, address, and EIN of the employer
 - Name and phone number of employer's contact person
 - Calendar year for which the information is reported
 - Certification that the employer offered its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (by calendar month)
 - Number of full-time employees for each calendar month

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Employer Reporting

Employer Reporting (\$6056)

- **Employee-specific Information**
 - Employee's name, address and social security number
 - Months during the plan year coverage was available (offered) to the employee
 - Employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value

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Employer Reporting

Employee Statement

- **By January 31, 2016, an ALE must provide a statement to each full-time employee with the**
 - Employee's name, address and SSN
 - Months during the plan year coverage was available (offered) to the employee
 - Employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value

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Employer Reporting

Employer Reporting (§6056)

- If an ALE is made up of multiple members
 - The ALE can report for all members; or
 - Each member can report individually
 - If each ALE member reports individually, the primary ALE member will be required to submit an Authoritative Transmittal with the aggregate totals of all members
 - Each ALE member will still be required to provide the employee statement to its employees

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Plan Reporting

Plan Reporting (§6055)

- By January 31, 2016, the plan must submit Form 1095-B to the IRS to meet the Section 6055 reporting requirements
- The form requires specific information about individuals covered by the plan for the coverage year
 - Name, address and EIN of reporting entity
 - Names, addresses and Social Security numbers of all covered subscribers and their covered dependents

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Plan Reporting

Member Statement (§6055)

- By January 31, 2016, the plan must also provide a statement to covered subscribers
 - The plan is not required to send a statement to members covered by the State Health Plan as secondary coverage (Medicare-primary retirees and members enrolled in the Tricare Supplemental Plan)

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Who is Eligible for Coverage?

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Beginning January 1, 2015

Eligibility

- PEBA will also allow an employer to offer health, dental, vision, the pre-tax premium feature and a Health Savings Account to
 - Full-time non-permanent employees
 - Variable-hour employees
- These employees will **not** be eligible for
 - Basic Life, Optional Life, Dependent Life, Basic Long Term Disability, Supplemental Long Term Disability, Money Plus Medical Spending Accounts or Dependent Care Spending Accounts.

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Full-Time, Non-Permanent Employees



Eligibility

- Must work at least 30 hours per week
- Not working in a full-time permanent position
- Eligible for benefits beginning January 1, 2015

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Variable-Hour Employees

Eligibility

- Do not consistently work 30 hours every week, but average at least 30 hours per week over a defined measurement period
- Eligible for benefits beginning January 1, 2015
- Applies to existing *or* continuing variable-hour employees

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Variable-Hour Employees

Safe Harbor Regulations

- **Measurement Period**
 - Period of time to review the number of hours worked by a variable-hour employee to determine future eligibility for benefits
- **Administrative Period**
 - Period of time (immediately following the measurement period) to notify a variable-hour employee of eligibility/ineligibility. Employer must offer benefits to eligible employees at this time for next plan year
- **Stability Period**
 - Period of time a variable-hour employee remains eligible regardless of the number of hours worked

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Variable-Hour Employees

Standard Measurement Period

- PEBA has established a standard measurement period of October 4 to the following October 3
- Employer reviews hours worked by each variable-hour employee during standard measurement period and determines average hours worked per week
- If employee averages 30 hours or more, employer must offer benefits

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Variable-Hour Employees

October 4, 2013 - October 3, 2014

Employee worked total of 1,560 hours during the measurement period

$1,560 \text{ Hours} \div 52 \text{ weeks} = 30 \text{ hours per week}$

Employee is eligible for benefits in 2015

* This is an example for calculating eligibility for a non-academic employee. The IRS has issued specific guidelines for academic employees.

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Variable-Hour Employees

Administrative Period

- PEBA established Administrative Period will be October 4 – October 31 each year
- During this time, the employer must
 - Identify variable-hour employees eligible for coverage in the following plan year
 - Notify employees and offer coverage
 - Submit Notice of Election (NOE) form or Summary of Enrollment (SOE) to PEBA to enroll or refuse coverage

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Example

October 4, 2014 – October 31, 2014

Employer will notify employee of eligibility for benefits in Plan Year 2015.

Employee will provide his employer with signed NOE or SOE enrolling in or refusing coverage.

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Variable-Hour Employees

Stability Period

- January 1, 2015 – December 31, 2015
- All variable-hour employees remain eligible for coverage throughout the stability period even if
 - Hours go below 30 hours within the stability period
 - Employee experiences a break in service of less than 13 weeks*

* Break in service of less than 26 weeks for academic employers

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Variable-Hour Employees

Example

Employee elected coverage during the administrative period for January 1, 2015 effective date

In February, employee's hours are reduced -- he is now working 20 hours per week

Employee's insurance continues because he is within the stability period

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Stability Period

Less than 13-week Break*

- If employee leaves employment, coverage will end first of the month after last day worked
- If employee returns to employment with same ALE within 13 weeks, he is eligible to enroll in benefits the first of the month following the date he returns. He remains eligible through the end of his stability period.

* Break in service of less than 26 weeks for academic employers

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What Do I Need to Do in October?

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October Enrollment

- Offer coverage to newly eligible employees
- Provide copy of *The Insurance Advantage* newsletter and Notice of Special Enrollment Rights
- Explain benefits available to them
- Collect NOE or SOE from employee either electing or refusing coverage
- Document file that you offered coverage
- Submit to PEBA for processing with all Annual Enrollment transactions

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What Should I Do on October 4, 2014 If My Employee Has Not Been Employed for 12 months?

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Employed for Fewer than 12 Months

- If the employee is a full-time, non-permanent employee, there is no measurement period required to determine eligibility – offer coverage
- If the employee is a new variable-hour employee, you can wait until the employee has completed his initial 12-month measurement period to determine eligibility

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New Variable-Hour Employees

Safe Harbor Rules

- **Initial Measurement Period** -- Begins the first of month after date of hire and ends after 12 months
- **Administrative Period** -- Begins day after initial measurement period and ends last day of same month; if eligible, employer offers benefits first of following month
- **Stability Period** -- Newly enrolled, variable-hour employees remain eligible for coverage for 12 months (initial stability period)

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New Variable-Hour Employees

Susan's Date of Hire is April 15, 2014

Initial Measurement Period
May 1, 2014 - April 30, 2015

Administrative Period
May 1, 2015 – May 31, 2015

Effective Date of Coverage (if eligible)
June 1, 2015

Stability Period
June 1, 2015 – May 31, 2016

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New Variable-Hour Employees

Standard Measurement Period

- All variable-hour employees' hours are reviewed annually (October 4 – October 3)

From our example: Susan is eligible for coverage through May 31, 2016. During the 2015 Administrative Period, Susan's hours need to be reviewed using the Standard Measurement Period to determine if she is eligible for coverage for the remainder of Plan Year 2016 (after May 31).

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FAQs

(Will Also Be Posted On Our Website)

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FAQ 1

Q: If an employee works for more than one PEBA Insurance Benefits covered employer, are the hours worked for all employers combined to determine eligibility?

A: If an employer is a member of an ALE employer group with multiple employer (state entities), the time worked for all members of the ALE are combined to determine an employee's eligibility.

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FAQ 2

Q: If the employee qualifies for coverage as a result of combining his hours from two members of the same ALE group, who is responsible for offering coverage to the employee?

A: The employer who works the employee the most hours would be responsible for offering coverage; in a tie, the employers will have to decide which one will offer coverage

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FAQ 3

Q: What happens if a variable-hour employee accepts a second position as a variable-hour employee with another state entity? Would the employee change from a variable-hour employee to a temporary full-time employee at that time and be immediately offered benefits?

A: Nothing would happen until the end of the measurement period established by the first employer.

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FAQ 4

Q. Are all PEBA Insurance Benefits covered employers considered one employer with regard to a variable-hour employee that transfers from one employer to another within the stability period (or within 13 weeks of termination)?

A. Only those employers who are part of a multiple member ALE employer group (state entities) are considered the same employer.

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FAQ 5

Q: Assuming the variable-hour employee returned to the same employer within 13 weeks, can he only enroll in the benefits he had when he left employment or can he make new elections?

A: If the employee has less than a 15-day calendar break (or he does not experience a break in coverage), no changes can be made. If the employee has more than a 15-day calendar break (or experiences a break in coverage), he would be eligible to make new elections (just like a new hire).

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FAQ 6

Q: What do I do if I terminate an employee and rehire him a couple of weeks later? Does his coverage continue or do I terminate coverage and then reinstate the coverage when he returns to work?

A: It depends on the employee's classification. Variable-hour employees remain eligible for the duration of the stability period. For other employees, follow Leave Without Pay (LWOP) rules.

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FAQ 7

Q: How about LWOP for variable-hour employees?

A: LWOP does not apply to variable-hour employees because they remain eligible for the duration of the stability period as long as they remain employed.

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FAQ 8

Q: How do we terminate a variable-hour employee due to non-payment? The Active Termination Form does not have an option for terminating due to non-payment.

A: Submit a NOE to terminate due to non-payment. There is a 30 day grace period. If subscriber submits payment during grace period, PEBA will reinstate coverage retro.

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FAQ 9

Q: If a variable-hour employee loses eligibility at the end of the stability period, do we need to offer COBRA?

A: Yes. Reduction in hours is a COBRA qualifying event.

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FAQ 10

Q: If all state entities are considered one employer for ALE status, how will state entities be assessed penalties?

A: For ALE groups with multiple employers, penalties will be assessed by the IRS at the individual employer member level.

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FAQ 11

Q: If an employee is married to a PEBA subscriber, can the employee refuse coverage as an active employee and remain covered as the spouse of a PEBA subscriber?

A: No. If eligible for his own benefits, he cannot remain covered as a dependent of another PEBA subscriber. (Exception: Dependent Life Spouse)

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FAQ 12

Q: Will employers be required to offer coverage to working retirees who already have coverage with PEBA as a retiree?

A: Yes. Coverage must be offered to the retirees who work at least 30 hour per week or average 30 hours per week over the measurement period.

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Working Retirees

Eligibility

- Working retirees' hours should be monitored
- If deemed eligible for active benefits, employer must offer active benefits to retiree
- Retiree may refuse active benefits and remain on retiree insurance as long as he (or his covered dependents) are not eligible for Medicare
- If eligible for Medicare, may not continue retiree insurance coverage

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Retiree Insurance Eligibility

Retiree Insurance

- No change in retiree insurance eligibility**
- S.C. Statute 1-11-730 reads ...**
 - “A person covered by the state health and dental plans who retires with at least five years' state-covered entity service credited under a state retirement system is eligible to participate in the state health and dental plans by paying the full premium as determined by the board, if the last five years are consecutive and in a **full-time permanent** position with a state-covered entity”

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Questions?
